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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CALIFORNIA NATURAL LIVING, INC., a California corporation, Plaintiff, vs. BUY BUY BABY, INC., a Delaware corporation; BED BATH & BEYOND, INC., a Delaware corporation; and DOES 1 through 10, Defendants.	Case No.: COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF FOR VIOLATION OF: 1. Trade Dress Infringement (15 U.S.C. §1125(a)(1)(A)); 2. False Advertising (15 U.S.C. §1125(a)(1)(B)); 3. California Unfair Competition Law (Business and Professions Code §17200 *et seq*.); 4. Common Law Unfair Competition; 5. Breach of Contract; 6. Intentional Interference with Prospective Economic Advantage; and DEMAND FOR JURY TRIAL

Plaintiff California Natural Living, Inc. is informed and believes and based thereon alleges:

THE PARTIES

1. Plaintiff California Natural Living, Inc. (previously known as Honky Tots, Inc.) dba California Baby (hereinafter “Cal Baby”) is a California corporation duly incorporated and existing under the laws of the State of California and registered to do business in California, with its principal place of business in Los Angeles.

2. Plaintiff is informed and believes, and based thereon alleges, that Defendant Buy Buy Baby, Inc. is a Delaware corporation. BuyBuy Baby is a wholly owned subsidiary of Defendant Bed Bath & Beyond Inc., which is also a Delaware corporation. Both BuyBuy Baby, Inc. and Bed Bath & Beyond have their headquarters located at 650 Liberty Avenue, Union, New Jersey. As its parent company, Bed Bath & Beyond expressly ratified every act and omission of Buy Buy Baby or by implication of fact, ratified said acts and omissions by accepting money and/or other consideration from Buy Buy Baby and also by, *inter alia*, monitoring the progress of BuyBuy Baby’s wrongful conduct measured by profits, revenues and sales (hereinafter BuyBuy Baby and Bed Bath & Beyond are collectively referred to as “BBB” or “Defendant”).

3. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants named herein as DOES 1 through 10, inclusive, are presently unknown to Plaintiff, which therefore sues these Defendants by such fictitious names. Plaintiff will seek leave of the Court to amend this Complaint to include the true and proper names and capacities when they have been ascertained. Plaintiff is informed and believes that each of the fictitiously named Defendants participated in some manner or is responsible or liable for the acts and omissions described in this Complaint and the damage resulting therefrom.

4. Cal Baby is informed and believes, and based thereon alleges, that each of the Defendants named as Does 1-10, inclusive, performed, participated in, aided or abetted, authorized, ratified, and/or acquiesced in some manner to, the acts and omissions alleged in this Complaint, proximately caused the damages alleged below, benefited fom such acts and omissions and is liable to Plaintiff for the damages and relief sought in this Complaint. Plaintiff is further informed and believes and based thereon alleges that in participating in and/or performing the acts and omissions alleged in the Complaint, the Defendants, including the Doe Defendants, and each of them, were acting as the agents, servants, employees, alter egos, successors or predecessors in interest, and/or contractors of the other Defendants, and were acting within the course and scope of such relationship with the knowledge, express or implied, of each such other Defendants, at all times relevant to this Complaint.

JURISDICTION AND VENUE

5. This Court has original subject matter jurisdiction over this dispute pursuant to 15 U.S.C. § 1051 *et seq*., 28 U.S.C. §§1331 and 1338(a), as this action arises under the Trademark Laws of the United States. This Court also has diversity jurisdiction pursuant to 28 U.S.C. § 1332, because Plaintiff is a citizen of a different state than Defendant, and the amount in controversy exceeds $75,000.

6. Venue is proper in this judicial district under 28 USC §1391(b) because a substantial part of the events or omissions giving rise to these claims occurred within this judicial district.

7. Venue is further based on 28 U.S.C.S. §1391(c) because BBB has several locations in this judicial district and advertises, distributes, offers for sale and sold the infringing products at issue in this case and regularly conducts business in California and within this judicial district.

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GENERAL ALLEGATIONS

8. Through hard work and great commitment to safety and quality, Cal Baby has become an industry leader in premium, naturally based personal care products for babies, kids and adults with sensitive skin. Their product line is now recommended by more than 80 pediatricians and dermatologists.

9. Cal Baby became an industry leader by pioneering the use of plant based ingredients from sustainable, organic sources and to this end operates its own organic farm from which it sources a number of its ingredients. All products are allergy tested and are free from peanuts, soy or dairy.

10. Cal Baby is also a pioneer in its manufacturing. Cal Baby is in partnership with the EPA's (Environmental Protection Agency) Green Power Partnership and is using more than 104,000 kWH of solar power annually – that's over 70% percent of its total electricity use which includes its product manufacturing facility.

11. Because of its 20-plus years of dedication to quality and sustainability, Cal Baby's products have become beloved by moms and dads throughout the USA and internationally. This goodwill is precious, valuable and cannot be replicated by other manufacturers easily or at all.

12. This action concerns two of Cal Baby's products: (A) "Super Sensitive (no fragrance) Shampoo & Body Wash;" and (B) "Calming (relaxes & unwinds) Shampoo & Body Wash" (collectively hereinafter "Cal Baby's Trade Dress Products").

13. In an illegal attempt to benefit from the goodwill and reputation of Cal Baby's Trade Dress Products, BBB is advertising, promoting and selling its own brand of similarly packaged products, which are deceptively named: (A) "Sensitive, Fragrance Free, Shampoo & Body Wash;" and (B) "Calming (soothes & relaxes) Shampoo & Body Wash" (collectively hereinafter "Offending Merchandise").

14. Cal Baby has designed and uses its own distinctive labeling and packaging to identify the two products at issue here. This labeling and packaging, or Trade Dress, is inherently distinctive and sets the products apart from other personal care products in the marketplace. Cal Baby's Trade Dress is nonfunctional, in that it is not necessary for the use of said products and is solely for identification of its products.

15. The Trade Dress of all of Cal Baby products consists of a collection of nonfunctional design elements which give the products a distinct overall look and commercial impression that includes but is not limited to: block product coloring that identifies particular characteristics and types of the product; specific unique color combinations, unique product descriptions, fonts and suggestive graphics.

16. The Offending Merchandise infringes on Cal Baby's trade dress and is likely to confuse the public in the following respects:

a. Same or similar product size – 19 fl oz and 19oz;

b. Same or similar packaging - same shaped, semi-opaque bottle;

c. Same or similar delivery system – pump;

d. Same or similar product color;

e. Same or similar label size;

f. Same or similar colors for label and fonts – Silver/Grey, Greens, Blues;

7. Same product name – Shampoo & Body Wash;

g. Same or similar product descriptions – Sensitive, No Fragrance, Calming, Relaxes;

h. Same or similar product attributes – Tear Free, Natural Cleansers, No Sulfates, Lavender;

i. Same label location for product information; and

j. Same or similar copying of Cal Baby's ingredient labels.

17. Cal Baby's Trade Dress Products have been extensively promoted by Cal Baby in the United States and internationally and have achieved substantial sales success. The public has come to recognize Plaintiff's Trade Dress as distinctive of this line of Cal Baby products and as an indication of the source of these products. Cal Baby's Trade Dress is thus a means by which Cal Baby is known to the public and trade as the sole source generally of all Cal Baby products and specifically of their origin. Accordingly, Cal Baby's Trade Dress design has very strong consumer association with Cal Baby.

18. Cal Baby's Trade Dress is not functional, as the packaging of the two products does not create any functional advantage for use of the products within, and the design of the packaging in no way affects the quality or function of the products.

19. The packaging of these Trade Dress Products is original and distinctive. These products are popular, well-known and sold in mass market stores and over the Internet throughout the United States and internationally.

20. As a result of Cal Baby's exclusive and extensive use and promotion of its Cal Baby Trade Dress Products as described above, Plaintiff's Trade Dress has acquired significant commercial value and recognition. Cal Baby's Trade Dress is well known to the trade and to the consuming public as identifying and distinguishing Cal Baby exclusively and uniquely as the source of the high quality products to which the Cal Baby Trade Dress is applied. The Cal Baby Trade Dress is both distinctive and has acquired secondary meaning.

21. Additionally, Plaintiff brings this civil action under the California Unfair Competition Law (Business and Professions Code section 17200 *et seq.)* ("UCL") in order to protect consumers and competitors from Defendant's unlawful, unfair and fraudulent business acts and practices and its false and misleading advertising involving the sale of two baby shampoo & body wash products in

California. This action also alleges various causes of action for fraud against all defendants.

Brief Overview of Unfair Competition Law applicable in this Action

22. The UCL protects both consumers and competitors by prohibiting "unfair competition," which is defined, in the disjunctive, by Business and Professions Code section 17200 as including "any unlawful, unfair or fraudulent business act or practice" as well as "unfair, deceptive, untrue or misleading advertising.

23. The *unlawful* prong of section 17200 includes anything properly called a business practice and that at the same time is prohibited by law.

24. The UCL's *unfair* prong "provides an independent basis for relief." *(Smith* v. *State Farm Mutual Automobile Insurance Co.* (2001) 93 Ca1.AppAth 700, 718.) "It is not necessary," therefore, "for a business practice to be 'unlawful' in order to be subject to an action under the unfair competition law." *(ld.)* "In general the 'unfairness' prong" has been used to enjoin deceptive or sharp practices.

25. The *fraudulent* prong of section 17200 "affords protection against the probability or likelihood as well as the actuality of deception or confusion." *(Payne v. United California Bank* (1972) 23 Cal.App.3d 850, 856.) Several aspects of the *fraudulent* prong are unique: "The test is whether "members of the public are likely to be deceived." *(In re Tobacco* 11 *Cases* (2009) 46 Cal.4th 298, 312.)

Defendant's Infringing Products and Advertising

26. In 2007, Cal Baby entered into a vendor-supplier agreement with BBB for Cal Baby to supply BBB with a line of Cal Baby products, including but not limited to the Cal Baby Trade Dress Products at issue here.

27. On information and belief, Cal Baby believes that sometime in or about 2015 or 2016, Defendant realized the success and popularity of Cal Baby's products

with customers and began to infringe on Plaintiff's Trade Dress by manufacturing, distributing, advertising, promoting, offering for sale and selling its own knockoff products which directly imitated Cal Baby's Trade Dress Products.

28. Defendant, without the consent of Plaintiff, continues to willfully manufacture, distribute, advertise, promote, offer for sale and sell throughout the United States its own knockoff baby "shampoo & body washes" that copy and imitate the distinctive Cal Baby Trade Dress Products.

29. The sale of Defendant's Offending Merchandise is likely to cause confusion and mistake or to deceive the consuming public into believing that such items originate from, are sponsored by or associated with Plaintiff, when such is not the case.

30. The Offending Merchandise is competitive with and also targeted towards the same group of ultimate consumers of Cal Baby's Trade Dress Products.

31. Defendant, without Cal Baby's authorization, intentionally and knowingly continues to manufacture, distribute, advertise, offer for sale and sell imitations of Cal Baby's Trade Dress Products by offering its own products with virtually the same names, wording, labeling and packaging. Defendant has copied the look and feel of Plaintiff's Trade Dress Products as can be seen in the following photographs.

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CALIFORNIA BABY
SHAMPOO & BODYWASH

buybuy BABY
SENSITIVE
FRAGRANCE FREE
shampoo & body wash

trusted since 1995
super sensitive
SHAMPOO & BODYWASH
buybuy BABY
SENSITIVE
FRAGRANCE FREE
shampoo & body wash
tear free formula
natural cleansers
no sulfates
NET WT 19 OZ (538 g)
20.99
13.99

trusted since 1995
calming
SHAMPOO & BODYWASH
19 fl oz (562 mL)
buybuy BABY
CALMING
SOOTHES & RELAXES
shampoo & body wash
tear free formula
natural cleansers
lavender & sage essential oil blend
NET WT 19 OZ (538 g)
20.99
13.99

32. The photographs above show that the overall appearance of BBB's Offending Merchandise is virtually identical to the overall appearance of the corresponding Cal Baby Trade Dress Products.

33. Defendant is offering its infringing products for sale and is illegally misrepresenting the nature, characteristics, qualities and geographic origin of its Offending Merchandise in its commercial advertising and promotions.

34. Defendant has intentionally designed its Offending Merchandise to confuse or deceive the public as to an affiliation, connection or association of its own products with Cal Baby's Trade Dress Products. Additionally, Defendant's Offending Merchandise is also designed to deceive the public as to the origin, sponsorship or approval of its products by Cal Baby.

35. By selling its infringing products in its Buy Buy Baby stores and misleading the public by placing and positioning its Offending Merchandise on shelves surrounded by only Cal Baby Trade Dress Products, Defendant has, and continues to damage the value of Cal Baby's exclusive rights to its Trade Dress and to the overall appearance of its products.

36. Defendant has copied Cal Baby's Trade Dress Products and offers for sale, advertises, promotes and sells its own products with the intent to benefit from Cal Baby's goodwill and reputation in the baby products market. Additionally, Defendant continues to illegally infringe Cal Baby's Trade Dress in order to deceive the public as to the source or origin of its imitation products and to profit from the demand created by Cal Baby's higher quality baby products.

37. Defendant's responses to online questions from consumers regarding its products are also designed to cause confusion, mistake or to deceive as to the origin of the its products.

38. In engaging in the acts of unfair competition alleged herein, Defendant acted willfully, with malice and with conscious disregard for the rights of Plaintiff, thereby entitling Plaintiff to an award of exemplary or punitive damages, pursuant to California Civil Code §3294, in an amount to be determined at trial.

COUNT ONE

(Trade Dress Infringement and False Designation of Origin pursuant to 15 U.S.C. §1125(a)(1)(A))

39. Plaintiff repeats and realleges each of the allegations set forth in Paragraphs 1 through 38.

40. Defendant's product labeling and the overall appearance of its two "shampoo & body wash" products is confusingly similar to that of the two Cal Baby Trade Dress Products at issue here.

41. Defendant's Offending Merchandise is confusing to the public because its overall appearance is virtually identical to the Trade Dress of Plaintiff's products.

42. Defendant is using misleading advertising to sell in interstate commerce its own version of Cal Baby's Trade Dress Products.

43. Defendant's products have confused and are likely to continue to confuse the public into mistaking Defendant's Offensive Merchandise for Plaintiff's Trade Dress Products. Defendant's Offending Merchandise also deceives the public by suggesting an affiliation, connection or association of their products with those of Cal Baby's.

44. Defendant further deceives the public as to the origin of their products by implying a sponsorship or approval of their products and commercial activity by Plaintiff.

45. Defendant's unlawful acts have caused immediate and irreparable harm to Plaintiff and will continue to cause irreparable harm to Plaintiff unless Defendant is enjoined from continuing such acts.

46. Plaintiff is informed and believes, and thereon alleges, that Defendant has profited from its unlawful actions and has been unjustly enriched to the detriment of Plaintiff. Defendant's actions have caused monetary damages to plaintiff by, *inter alia*, diminishing the hard-earned goodwill and reputation of Plaintiff with the public, which has resulted in a loss of past and future sales and profit to Plaintiff.

47. Plaintiff is further informed and believes, and thereon alleges, that Defendant's unlawful actions have caused, and will continue to cause monetary damage to Plaintiff in an amount that exceeds $75,000.00.

COUNT TWO

(False Advertising pursuant to 15 U.S.C. §1125(a)(1)(B))

48. Plaintiff repeats and realleges each of the allegations set forth in Paragraphs 1 through 38 and 40 through 47 as though fully set forth herein.

49. As hereinabove alleged, Plaintiff has created, developed and authored certain stylistic and unique commercial advertising, marketing and promotional materials in connection with its Cal Baby Trade Dress Products including but not limited to customer communications, advertisements, press releases, product colors, product descriptions and photographs.

50. Defendant also advertises and promotes its products in interstate commerce, however, Defendant has and continues to use labeling and packaging in the commercial advertising and promotion of its products that misrepresent the nature, characteristics, qualities and origin of its products.

51. Defendant has engaged in misleading commercial advertising and promotion by misrepresenting to the public the nature, characteristics, qualities and origin of its Offensive Merchandise. Defendant advertises and promotes its Offending Merchandise through website communications, magazine advertisements, promotions and direct marketing material sent to the media, distributors, consumers and retailers. This misleading advertising and promotion is material, as it actually has and is likely to continue to cause the public to mistake Defendant's Offending Merchandise for Plaintiff's Trade Dress Products.

52. Defendant's false statements and misleading descriptions of fact have and are likely to continue to be injure Plaintiff either by direct diversion of sales away from Plaintiff to Defendant or by a lessening of goodwill associated with Plaintiff's products.

53. Defendant's misleading actions have confused and deceived a substantial segment of its audience and is likely to continue to confuse and deceive them. Defendant's actions constitute a false designation of origin and a false or

misleading description or representation of its Offensive Merchandise to the actual monetary detriment as well as loss of goodwill and reputation of Plaintiff.

54. Defendant's actions as set forth above are likely to have influenced the consuming public's purchasing decisions regarding "shampoo & body washes."

55. Defendant's unlawful acts have caused immediate, irreparable harm to Plaintiff and will continue to cause irreparable harm to Plaintiff unless Defendant is enjoined from continuing such acts.

56. Plaintiff is informed and believes, and thereon alleges, that Defendant has profited from its unlawful actions and has been unjustly enriched to the detriment of Plaintiff.

57. Plaintiff is further informed and believes, and thereon alleges, that Defendant's unlawful actions have caused, and will continue to cause monetary damage to Plaintiff in an amount that exceeds $75,000.00.

COUNT THREE

(Unfair Competition Law, California Business and Professions Code §17200 *et seq*.)

58. Plaintiff repeats and realleges each of the allegations set forth in Paragraphs 1 through 38, 40 through 47 and 49 through 57 as though fully set forth herein.

59. Plaintiff is informed and believes and thereon alleges, that Defendant distributes, offers for sale and sells retail goods to the public for purchase. Defendant sells its Offending Merchandise at numerous retail stores in California and in other states in the United States.

55. Plaintiff has created, developed and authored certain stylistic and unique advertising and marketing materials in connection with the promotion and sale of its Cal Baby Trade Dress Products. These promotional materials include, *inter alia*, customer communications, advertisements, press releases, product colors, product descriptions and photographs.

60. In violation of the unlawful, unfair and fraudulent prongs of section 17200, Defendant has engaged in unlawful advertising, marketing and promoting its Offending Merchandise to the public and has offered it for sale through website communications, magazine advertisements and direct marketing material sent to the media, distributors, consumers and retailers. Defendant's website communications, advertising, marketing and promotional materials have been, and continue to be, confusingly similar to Plaintiff’s advertising, marketing and promotional materials.

61. The unfairly misleading advertising, marketing and promotional materials of Defendant’s Offending Merchandise are likely to deceive the public into believing that an affiliation, connection or association exists between the Offending Merchandise and Cal Baby’s Trade Dress Products.

62. Defendant’s advertising, marketing and promoting of its Offending Merchandise has fraudulently confused and is likely to continue to confuse the public by constituting a false designation of origin and a false or misleading description or representation of its products.

63. Defendant's advertising, marketing and promotional activities, as alleged above, constitute unfair competition in violation of §17200 of the California Business and Professions Code.

64. As a direct, proximate and foreseeable result of Defendant's wrongful advertising and promotional conduct, Defendant’s business acts and practices have caused injury to Plaintiff. Plaintiff is entitled to relief, including full restitution and disgorgement of profits and benefits which may have been obtained by Defendant as a result of such unfair business acts and practices.

65. Defendant's illegal advertising, marketing and promotional activities as described above are a continuing threat to Plaintiff. Unless enjoined, Plaintiff will suffer further imminent and irreparable injury, the amount of which will be difficult to ascertain. Plaintiff is therefore, without an adequate remedy at law.

66. Plaintiff is further informed and believes, and thereon alleges, that Defendant's unlawful actions have caused, and will continue to cause monetary damage to Plaintiff in an amount that exceeds $75,000.00.

COUNT FOUR

(Common Law Unfair Competition)

67. Plaintiff repeats and realleges each of the allegations set forth in Paragraphs 1 through 38, 40 through 47, 49 through 57 and 59 through 66 as though fully set forth herein.

68. Plaintiff has created, developed, and authored certain stylistic and unique advertising and marketing materials in connection with the promotion and sale of its Cal Baby Trade Dress Products, as described above.

69. Defendant has engaged in widespread marketing and advertising to the public and offering for sale its Offending Merchandise through interstate commerce. Plaintiff is informed and believes, and thereon alleges that Defendant's advertising materials have been, and continue to be, purposefully so similar to the overall appearance of Cal Baby's Trade Dress Products as to cause the public to confuse Defendant's products with those of Plaintiff.

70. Plaintiff is informed and believes, and thereon alleges, that Defendant's advertising activities are, and have been, misleading and continue to deceive the public into believing that Defendant's Offending Merchandise has an affiliation, connection or association with Cal Baby's Trade Dress Products.

71. Plaintiff is informed and believes, and thereon alleges, that Defendant's actions have confused and are likely to continue to confuse the public and constitute a false designation of origin along with a false or misleading description or representation.

72. Plaintiff is informed and believes, and thereon alleges, that the acts of Defendant set forth above constitute common law unfair competition.

73. Defendant's unlawful acts have caused immediate, irreparable harm to Plaintiff and will continue to cause irreparable harm to Plaintiff unless enjoined.

74. Plaintiff is informed and believes, and thereon alleges, that Defendant has profited from its unlawful actions and has been unjustly enriched to the detriment of Plaintiff. Plaintiff is further informed and believes, and thereon alleges, that Defendant's unlawful actions have caused, and will continue to cause monetary damage to Plaintiff in excess of $75,000.00.

75. In engaging in the acts of unfair competition alleged herein, Defendant acted willfully, with malice, oppression and with conscious disregard for the rights of Plaintiff, thereby entitling Plaintiff to an award of exemplary or punitive damages, pursuant to California Civil Code §3294, in an amount to be determined at trial.

COUNT FIVE

(Breach of Contract)

76. Plaintiff repeats and realleges each of the allegations set forth in Paragraphs 1 through 38, 40 through 47, 49 through 57, 59 through 66 and 67 through 75 as though fully set forth herein.

77. Plaintiff had an ongoing vendor-purchaser relationship with Defendant beginning in or about November 2007 wherein Plaintiff would provide its quality products to Defendant for sale in its stores. Defendant agreed to advertise, promote and sell Plaintiff's products, including providing shelving and display of Cal Baby's Trade Dress Products and Cal Baby's other products as a block of premium products.

78. Plaintiff substantially performed all of its required duties under the vendor-purchaser agreement and any and all conditions were met or were otherwise waived or excused.

79. In California, every contract or agreement there is an implied promise of good faith and fair dealing. This means that each party will not do anything to

unfairly interfere with the right of any other party to receive the benefits of the contract. Bed Bath & Beyond failed and refused to communicate to Plaintiff that BuyBuy Baby was acting or omitting to act as herein alleged, although at all times alleged, it had a duty to do so based on this implied covenant of good faith and fair dealing so that Plaintiff could take steps to protect its interests.

80. Defendant breached its contract with Plaintiff by using its corporate supervisory agents, including Bed Bath & Beyond, to directly or indirectly capitalize BuyBuy Baby by providing the funding necessary for BuyBuy Baby to manufacture, distribute promote and/or sell the Offending Merchandise, and to aide and abet BuyBuy Baby to maliciously, fraudulently and oppressively employ the following patterns and practices: (a) selling Defendant's own Offending Merchandise, thereby infringing on Plaintiff's Trade Dress and style of doing business; (b) using virtually identically-packaged but lower priced products; (c) placing its Offending Merchandise on shelving alongside Cal Baby's Trade Dress Products; (d) using and mimicking Cal Baby's block coloring scheme which helps customers identify the style and characteristics of Plaintiff's Trade Dress Products; (e) using misleading information in comparing the size of Plaintiff's Trade Dress Products to Defendant's Offending Merchandise; (f) attempting to confuse and mislead Cal Baby customers; and (g) disparaging Cal Baby's products by suggesting its Offending Merchandise was of equal quality to Cal Baby's Trade Dress Products.

81. As its corporate parent, Bed Bath & Beyond conspired and cooperated with BuyBuy Baby to wrongfully harm Plaintiff by knowingly and willfully presenting to BuyBuy Baby all the information it might need that was not publically available to exploit Plaintiffs business, financial and marketing opportunities with respect to the Offending Merchandise. Plaintiff is further informed and believes that Bed Bath & Beyond participated in the wrongful acts and omissions by hiring, employing and/or compensating the persons or entities that infringed upon

Plaintiff's Trade Dress, including but not limited to, those who designed Defendant's misleading packaging, and/or its advertising and promotional materials.

82. Additionally, before the inception of its contractual relationship with Plaintiff, Bed Bath & Beyond failed and refused to disclose to Plaintiff that in fact, it intended to wrongfully compete with Plaintiff by causing, permitting, aiding and abetting, conspiring with and/or ratifying the conduct of BuyBuy Baby.

83. As a result of Defendant's breach, Plaintiff has suffered and continues to suffer monetary damages in excess of $75,000.00.

COUNT SIX

(Intentional Interference with Prospective Economic Advantage)

84. Plaintiff repeats and realleges each of the allegations set forth in Paragraphs 1 through 38, 40 through 47, 49 through 57, 59 through 66, 68 through 75 and 77 through 83 as though fully set forth herein.

83. By way of its infringing conduct, Defendant intentionally and with conscious disregard of the established economic relationship Cal Baby had with the public, interfered with such relationship that would otherwise likely have resulted in a future economic benefit to Plaintiff.

84. Defendant intentionally misled the public by infringing on the overall appearance and Trade Dress of Cal Baby's Trade Dress Products.

85. Defendant's intentional acts of misleading the public to confuse them and lead them to believe that Defendant's products were actually Cal Baby's products disrupted Cal Baby's relationship with its consumers and caused Cal Baby harm.

86. Defendant's wrongful infringing conduct was a substantial factor in Plaintiff's harm and caused Plaintiff to suffer damages.

87. As a result of Defendant's wrongful conduct, Plaintiff has suffered monetary damages in excess of $75,000.00.

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88. In engaging in the acts of unfair competition alleged herein, Defendant acted willfully, with malice and with conscious disregard for the rights of Plaintiff, thereby entitling Plaintiff to an award of exemplary or punitive damages, pursuant to California Civil Code §3294, in an amount to be determined at trial.

Prayer for Relief:

Wherefore, Plaintiff prays for judgment against Defendant BBB, together with its officers, employees, agents, servants, partners, joint venturers, associates, representatives and all persons acting on behalf of, in concert with, or forthem, as follows:

A. That pursuant to 15 U.S.C. §1051 *et seq*., California Business and Professions Code §17200 *et seq*., and the equitable powers of the Court, Defendant be temporarily, preliminarily and then permanently enjoined and restrained from distributing, advertising, promoting and selling the Offending Merchandise.

B. That Defendant recall its Offending Merchandise from any and all channels of distribution.

C. That Defendant account to Plaintiff for profits arising from the foregoing acts of trade dress infringement, false designation of origin and deceptive acts and practices.

D. That Defendant destroy all infringing products in its possession or control in accordance with 15 U.S.C. §1118.

E. That Defendant file with the Court and Plaintiff within thirty (30) days after entry of any injunction issued by the Court in this action, a sworn written statement pursuant to 15 USC §1116(a) setting forth in detail the manner and form in which Defendant has complied with any injunction that the Court may enter in this action.

F. That Plaintiff be awarded monetary damages to be proven at time of trial.

G. That Plaintiff be awarded judgment for three times such profits or damages awarded (whichever is greater), pursuant to 15 USC §1117.

H. That Plaintiff be awarded punitive damages.

I. That Plaintiff have and recover its costs, including its reasonable attorney's fees and disbursements in this action.

J. That Plaintiff have such other and further relief as the Court may deem just and proper.

Dated: February 3, 2017

COLLINS |FORD LLP
William H. Ford, III
Michael D. Collins

s/ Michael D. Collins
Attorneys for Plaintiff
California Natural Living, Inc.

DEMAND FOR JURY TRIAL

Pursuant to FRCP Rule 38(b), Cal Baby hereby demands a trial by jury on all issues so triable.

Dated: February 3, 2017

COLLINS | FORD LLP
William H. Ford, III
Michael D. Collins

s/ Michael D. Collins
Attorneys for Plaintiff
California Natural Living, Inc.